

Federal Property Management Regulations

§ 101-8.709

§ 101-8.704 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 101-8.706 of this regulation

(a) *General rule.* No person in the United States may on the basis of age, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from GSA.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangement, use age distinctions or take any other actions that have the effect on the basis of age, of:

(1) Excluding individuals from participating in, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individual opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The forms of age discrimination listed in paragraph (b) of this section are not necessarily a complete list.

§ 101-8.705 Definition of normal operation and statutory objective.

The terms *normal operation* and *statutory objective* are defined as follows:

(a) *Normal operation* means the operation of a program or activity without significant changes that would inhibit meeting objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 101-8.706 Exceptions to the rules against age discrimination.

§ 101-8.706-1 Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity.

An action reasonably takes into account age as a factor if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic must be measured or approximated for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic can be reasonably measured or approximated by the use of age; and

(d) The other characteristic is impractical to measure directly on an individual basis.

§ 101-8.706-2 Reasonable factors other than age.

(a) A recipient is permitted to take an action, otherwise prohibited by § 101-8.706-1, which is based on something other than age, even though the action may have a disproportionate effect on persons of different ages.

(b) An action may be based on a factor other than age only if the factor bears a direct and substantial correlation to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 101-8.707 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 101-8.706 is the recipient's.

§ 101-8.708 Affirmative action by recipient.

Even in the absence of a finding of age discrimination, a recipient may take affirmative action to overcome the effects resulting in limited participation in the recipient's program or activity.

§ 101-8.709 Special benefits for children and the elderly.

If a recipient's program provides special benefits to the elderly or to children, such use of age distinctions is presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 101-8.705.